September 2000

City Auditor's Office

City of Kansas City, Missouri

September 20, 2000

Honorable Mayor and Members of the City Council:

This follow-up audit of the Public Works Department's street resurfacing contracts was initiated by the city auditor pursuant to Article II, Section 13 of the city charter. The follow-up report was initiated as part of the City Auditor's Office policy of determining department progress in improving program operations subsequent to issuance of our audit reports.

Our follow-up found that the Public Works Department has made considerable progress in implementing the recommendations included in our original audit. Bid practices have improved and controls over contracts have been strengthened. The amount of asphalt used is monitored more closely, the reimbursement of state sales tax has almost been eliminated, and bid specifications used to evaluate proposals focus on major items.

We also found, however, that further improvements are needed. Lists of streets to be resurfaced are only provided to contractors that bid regularly; this could give the appearance of favoritism. Warranty inspections are still not documented. Finally we found that changes in the dollar amount of contracts, although lower than at the time of our original audit, remain high. Most of these changes occur as a result of repair work performed for the Water Services Department. In 1999, Public Works paid almost \$400,000 for these repairs. The method of payment—25 percent on top of the contractor's material, labor and equipment costs can serve as a disincentive for keeping costs low. The amount of repair work performed, and the lack of controls over costs, are such that Public Works should contract for repair work separately or revise the resurfacing contracts to include street repairs made for Water Services.

We sent the draft follow-up report to the city manager and the director of Public Works on August 18, 2000. The director of Public Works' written response is included as Appendix C. We appreciate the courtesy and cooperation extended to us during this project by staff in the Public Works Department. The audit team for this project was Chanel Goodwin-Watkins and Michael Eglinski.

Mark Funkhouser City Auditor

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List of Exhibits

Introduction

Objectives

This follow-up audit of the Public Works Department's street resurfacing contracts was conducted pursuant to Article II, Section 13 of the Charter of Kansas City, Missouri, which establishes the Office of the City Auditor and outlines the city auditor's primary duties.

A performance audit is an objective and systematic examination of evidence to independently assess the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decision-making by parties with responsibility to oversee or initiate corrective action. A follow-up audit is an examination for the purpose of reporting on the extent to which an agency has addressed problems identified in a prior audit.

This follow-up audit was designed to answer the following questions:

- Has Public Works improved controls over contracting?
- Has Public Works removed rarely-used items from bid evaluations?
- Has Public Works improved its monitoring of contracts?

Scope and Methodology

This follow-up audit was designed to determine the progress made in addressing issues raised in the 1997 performance audit.² The follow-up audit was performed in accordance with generally accepted government auditing standards, with the exception of the completion of an external quality control review of the City Auditor's Office within the last three years.³ Our methods included:

¹ Comptroller General of the United States, *Government Auditing Standards* (Washington, DC: U.S. Government Printing Office, 1994), p. 14.

² Performance Audit: Public Works Department Street Resurfacing Program Contracts, Office of the City Auditor, Kansas City, Missouri, March 1997.

³ Our last review was in April 1995. An external review is planned for the current year.

- Reviewing the March 1997 audit and selected workpapers, and the Audit Report Tracking System (ARTS) reports submitted by management in response to the audit.
- Reviewing contracts and related documents for the 1999 resurfacing year (fiscal year 2000).
- Interviewing staff from the Public Works and Water Services departments.
- Examining city records, procedures, and documents related to street resurfacing.
- Observing resurfacing work in the field with the program manager.

No information was omitted from this report because it was deemed privileged or confidential.

Background

The City Charter authorizes the city to make public improvements, including paving and resurfacing. Resurfacing a street can improve the ride quality, provide protection from weathering, and extend the life of a street.

The Public Works Department is responsible for resurfacing city streets. Public Works staff rate the condition of city streets to develop resurfacing plans. In general, streets with the worst condition are included in the resurfacing program. The program is divided into four geographic areas, with a separate contract for each area.

Public Works seeks bids for each contract; historically, however, few firms bid for the resurfacing contracts. Only three firms submitted bids for any of the 12 contracts we reviewed during our original audit. Of the four contracts we reviewed for this follow-up audit, only two firms submitted bids.

In the last five years, the City Council increased expenditures on street preservation from \$6 million in 1996 to \$11.5 million.⁴ The significant

⁴ The street preservation program includes street resurfacing, slurry seal, and crack seal.

increase reflects the City Council's emphasis on addressing deferred maintenance.

Summary of the 1997 Performance Audit

In 1997, we found problems with Public Works' controls over contracting, bid specifications, and contract monitoring. These problems decreased the benefits derived by the city through competition for resurfacing work. We made a number of recommendations to improve contracting practices, ensure that bid specifications reasonably represent the work done under the contracts, and improve inspection practices.

Appendix A lists the recommendations from the 1997 audit. Audit Report Tracking System (ARTS) reports submitted by management are included in Appendix B.

Findings and Recommendations

Summary

The Public Works Department has made progress in implementing the recommendations included in our original audit. Bid practices have improved and controls over contracts have been strengthened. The amount of asphalt used is monitored more closely, the reimbursement of state sales tax has almost been eliminated, and bid specifications used to evaluate proposals focus on major items. We also found that further improvements are needed. Lists of streets to be resurfaced are provided to contractors that regularly bid. This could give the appearance of favoritism. Warranty inspections are still not documented. Finally, contract changes are about half of what they were in 1997. Most of these changes are a result of repair work performed for the Water Services Department. To improve controls over repair work, Public Works should contract for repair work separately or revise the contracts to include street repairs for Water Services.

Public Works Improved Bid Evaluation and Contract Requirements

Public Works improved the evaluation of bids and contract requirements; advertising preliminary information about resurfacing plans would further improve the program. The bid specifications used to evaluate proposals focus on the major items used in the resurfacing program. The department removed a contract provision requiring contractors to reweigh trucks that it had not been enforcing. However, the department continues to provide routine bidders with a preliminary list of the streets to be resurfaced, rather than making such a list available to all potential bidders.

Rarely-Used Items Are Still Included, but Have Little Effect on Contractor Selection

Although Public Works has not eliminated rarely-used items listed in resurfacing contracts, the estimated quantities are so small that there is very little chance the prices for these items could affect the outcome of the selection process. Our original audit reported that Public Works sought bids for items that were rarely used and included these items

when evaluating bids. We recommended not including these items when the department evaluated the bids.

The main items used during resurfacing – recycled asphalt and cold milling – are the items that have the greatest weight. The value of the items not used in each of the 1999 contracts was about \$7,000, less than one-half of one percent of the estimated contract values of \$1.7 to \$2.9 million. As a result, including the items in the bid evaluation did not affect contractor selection.

Unenforced Contract Provision Eliminated

Public Works no longer requires contractors to reweigh trucks at their own expense. At the time of the original audit, resurfacing contracts included a requirement that trucks had to be reweighed. The department did not enforce the requirement. The Missouri Department of Agriculture's Weights and Measures Division is responsible for ensuring the accuracy of all commercial weighing and measuring devices in the state. We recommended that Public Works remove the provision from the contracts, rely on state certification of the asphalt plant scales, and maintain documentation that the scales were certified. Public Works maintains some documentation of the certification.

Street Lists Should Be Available to All Potential Bidders

Public Works still provides those companies that routinely submit bids with a preliminary list of the streets to be resurfaced. The preliminary lists can be used by bidders to prepare their bids and could result in more favorable unit price proposals. Our original audit recommended that the department advertise the availability of the street lists to ensure that all potential bidders have access to the same information. Public Works advertised the availability of the street lists in 1997, but has not done so since.

Releasing the lists to specific companies could give the appearance that the city favors certain contractors. Public Works should publicly inform potential bidders that the preliminary resurfacing lists are available. For example, the department could post the preliminary street list on the city's website.

Contract Administration Strengthened, but Further Improvements Needed

The Public Works Department has improved its administration of resurfacing contracts. Reimbursement of sales tax has almost completely been eliminated, asphalt usage is more closely monitored, and contract changes are about half of what they were in 1997. We also found, however, that contract changes continue to be high, contractors still start work prior to being issued a notice to proceed, and warranty inspections and repairs are not documented.

Sales Tax Reimbursement Virtually Eliminated

Controls established by Public Works to reduce the likelihood that sales tax will be reimbursed have almost completely eliminated any such reimbursement. In our original audit, we estimated that about \$9,500 of sales tax had been reimbursed despite the city's sales tax exempt status. Since the original audit, staff review reimbursement requests and generally identify sales taxes that should not be reimbursed. Of 60 invoices we examined for the follow-up, 43 included sales taxes; of these, the taxes were reimbursed on only 2. The contracts we examined totaled about \$10.4 million; the sales tax reimbursed totaled about \$50.

Inspectors Track Estimated and Actual Asphalt Use

Inspectors compile daily usage reports that include the amount of asphalt the city estimated would be used on a street segment and the amount the contractor actually used. Our original audit recommended that Public Works inspectors compare the actual amount of asphalt used to the estimated amount to identify significant overruns and improve the accuracy of estimates. The amount of asphalt used beyond the estimate was lower in 1999 than in our original audit. At the time of our original audit, contractors used 14 to 19 percent more than estimated; our follow-up found that in 1999, contractors used about 12 percent more asphalt than estimated.

Contract Changes Less Significant But Remain Large

The amount paid for resurfacing contracts in 1999 increased by 16 percent over the award amount, about half the increase we identified during the original audit. Although this increase is a smaller percent than that in our original audit, it totaled \$1.4 million.

Contracts are increased primarily due to the following conditions:

- Streets are added to the resurfacing contracts. The Public Works Department prepares the contracts and seeks bids before the City Council adopts the budget. If more money is appropriated or the bids are lower than expected, Public Works may include additional streets.
- Unanticipated repairs. Public Works directs contractors to make street repairs, for example, when a street is damaged by a water main break. These repairs are, to a large extent, beyond the scope of the planned resurfacing work.

Good contracting practices require that all potential bidders be aware of the terms and value of contracts. Contractors who anticipate significant increases in the value of the contracts could have an advantage in the bidding process. Our original audit recommended clarifying the expectations for potential bidders by reducing the amount of work done beyond the scope of the planned resurfacing work.

Work Still Begins Prior to the Issuance of Notices to Proceed

Contractors continue to begin resurfacing work before the city has issued notices to proceed. In the original audit, milling and paving work began prior to the notice being issued in 11 of the 12 contracts we examined, and we recommended that Public Works prohibit the start of work prior to the issuance of a notice to proceed. In 1999, work began prior to the city's issuance of the notices to proceed on three of the four contracts we examined.

Beginning work before the city has issued a notice to proceed exposes the city to unnecessary risk. The contractors' performance bonds may not yet be in effect, the city could be liable should an accident occur at a job site, and city oversight might not be in place. The director of Public Works should improve controls over contracting by prohibiting contractors from working before the city issues notices to proceed.

Warranty Inspections and Repairs Are Still Not Documented

Although the program manager inspects the contractors' work to identify deficiencies covered by warranty, these inspections and repairs are not documented. Our original audit recommended that these inspections be documented. Documentation helps ensure all streets are inspected and deficiencies are identified and repaired. The director of Public Works should document warranty inspections and repairs.

Public Works Should Further Improve Controls over Unanticipated Work

Public Works has improved the administration of unanticipated work – which is handled through "force account." (See text box.) The department wrote a policy that covers work done through force account and revised the estimates of the amount of force account work. Most of the work done through force account, however, consists of street repairs charged to the Water Services Department and is not normal resurfacing work. The lack of controls over costs and the volume of work is such that Public Works should have a separate contract for street repairs charged to Water Services. As an alternative to a separate contract, Public Works could revise the resurfacing contracts to include street repairs made for Water Services.

Paying for Work through "Force Account"

Public Works uses force account to pay resurfacing contractors for unanticipated work when there is no unit price or lump sum price for the work. Under force account, contractors are paid:

- Payroll costs
- Materials costs
- Equipment rental costs
- Tax and insurance costs
- Overhead and profit, calculated as 25 percent of the actual costs.

Public Works Developed a Policy for the Use of Force Account

Public Works wrote a policy that describes when force account is used, and how the work is inspected, monitored, and documented. Our original audit found a lack of policies addressing the use of force account and recommended that the department develop policies and procedures to strengthen controls.

Public Works complies with its current policy on force account. We reviewed force account files and found the work was allowable under the policy, and staff was monitoring and documenting the work. Among the projects paid through force account were building speed bumps, repairing drainage problems, repairing streets, paving at city facilities, and cleaning.

Estimates of Force Account Are More Accurate, but Remain Low

Public Works' estimates of the amount of force account, although low, were more accurate in 1999 than at the time of the original audit. From 1993 through 1996, the amount of force account was \$382,000 to \$571,000 more than Public Works estimated. Since the original audit, Public Works revised the estimates of force account. In 1999, the department estimated that \$200,000 of work would be done through force account; actual work done through force account exceeded the estimate by \$287,000. (See Exhibit 1.)

Exhibit 1. Force Account Payments

Estimated	Actual Amount	Difference
Amount	Paid	
\$ 75,000	\$483,733	\$408,733
75,000	457,056	382,056
75,000	568,892	493,892
75,000	646,325	571,325
200,000	487,360	287,360
	Amount \$ 75,000 75,000 75,000 75,000	Amount Paid \$ 75,000 \$483,733 75,000 457,056 75,000 568,892 75,000 646,325

Source: Public Works' resurfacing contract files.

Public Works Should Contract Separately for Water Repairs

To reduce the amount of work done through force account and strengthen controls over street repairs for the Water Services

Department, Public Works should let separate contracts for these repairs.

A separate contract for Water Services' repairs is justified because the repair work is of such a large magnitude and is different from normal resurfacing work. In addition, the current method of handling these repairs is not subject to the controls inherent in competitive contracting.

As an alternative to a separate contract, Public Works could revise the resurfacing contracts to include street repairs made for Water Services.

Resurfacing contractors did almost \$400,000 of repair work for Water Services which was paid for through force account. Repair work performed for the Water Services Department differs from normal resurfacing work. The work, which is done year-round and is not scheduled nor planned, includes full-depth street repairs, concrete work, and miscellaneous work such as sidewalk and driveway repairs. The amount and type of repair work is such that, if contracted separately, it could conceivably be performed by contractors other than those who normally compete for the city's main resurfacing contracts.

Work done through force account is not subject to the controls inherent in competitive bidding. Under force account, contractors are paid 25 percent overhead and profit based on the costs of their materials, labor,

Findings and Recommendations

and equipment. This method of payment serves as a disincentive to controlling costs and reduces the benefits derived by the city as a result of competitive bidding.

To reduce the amount of work done through force account and strengthen controls over street repairs for the Water Services

Department, Public Works should contract separately for street repairs for Water Services. While the administrative costs of writing a contract and selecting a contractor are significant, the cost of the work – almost \$400,000 in the most recent year – could be high enough to justify these costs. Contracting for repairs for Water Services would improve controls, but might increase costs to make repairs.

As an alternative to a separate contract, Public Works could revise the resurfacing contracts to include street repairs made for Water Services.

Recommendations

- 1. The director of Public Works should make preliminary resurfacing street lists available to all potential bidders by publicly informing potential bidders of their availability.
- 2. The director of Public Works should prohibit contractors from working before the city issues notices to proceed.
- 3. The director of Public Works should document warranty inspections and repairs.
- 4. The director of Public Works should establish a separate contract or revise the resurfacing contracts to include street repairs made for Water Services.

Appendix A

Prior Audit Recommendations

- The director of Public Works should increase control over the use of force account by developing policies and procedures: on conditions under which force account work is appropriate; inspecting, monitoring, and documenting work performed; and payments.
- The director of Public Works should reduce the number of projects completed under force account by developing separate contracts for street repairs related to water main breaks and for planned activities such as paving city parking lots.
- The director of Public Works should provide all contractors with a sales tax exemption certificate before construction work begins and discontinue reimbursing sales tax costs.
- 4. The director of Public Works should improve controls over contracting by prohibiting the start of work prior to the issuance of a notice to proceed; removing unenforced contract provisions; and publicly advertising the availability of street lists so that all potential bidders have equal access to information.
- The director of Public Works should improve controls over contracting by ensuring that the asphalt plant scales are certified before work begins and that the certification is documented in the contract files.
- The director of Public Works should improve the accuracy of bid specifications and evaluation. Bids should be evaluated on the items that are likely to be used. Proposals may be requested for the other items, but these should be separated from the items used to evaluate bids.
- 7. The director of Public Works should improve contract monitoring by including estimated amounts of asphalt in daily reports, documenting reasons for construction delays, and documenting warranty inspections and the repairs of any deficiencies.

Appendix B

Audit Report Tracking System (ARTS) Reports

Audit Report Tracking System				
1. Audit Title	2. This Report Date SEP 3 1007			
Street Resurfacing Program	25-Aug-97			
3. Department	4. Last Report Date			
Public Works, Street & Traffic	4-Mar-97			
5. Department Head	6. Contact Person/Phone			
George E. Wolf, Jr.	Jere Meredith, 274-2481			
7. Audit Release Date	8. ARTS Number			
10-Sep-97	956-024-1			

9. Status of All Audit Recommendations

Status	Date	Status	Date
1. In Progress	8/1/97		
2. Implement in 1998	8/1/97		
3. Implemented	6/1/97		t sur luaix (Alexand) (s. l. l.)
4. Partially Implemented	5/1/97		
5. Implemented	6/1/97		요즘하면 화가를 하는 것이다.
6. Implement in 1998	8/1/97		
7. Implemented	5/1/97		그는 대학 전문 등을 만든다.
			그는 이 얼마를 지내려고 있다고 말

10. Recommendations Included in this Report

Recommendation No. 1: Increase control over the use of force account by developing policies and procedures and conditions under which force account work is appropriate; inspecting, monitoring, and documenting work performed; and payments.

Status: In progress. We are in the process of developing guide lines for force account work. This will be completed by March 1998 for incorporation with next year's program.

Recommendation No. 2: Reduce the number of projects completed under force account by developing separate contracts for street repairs related to water main breaks and for planned activities such as paving city parking lots.

Status: Implement in 1998. A contract for street repairs due to water main breaks will be bid in April 1998. We will continue paving parking lots at city facilities through our resurfacing contracts.

Recommendation No. 3: Provide all contractors with a sales tax exemption certificate before construction work begins and discontinue reimbursing sales tax costs.

Status: Implemented 6/97. Sales tax exemption certificates were issued for all resurfacing contracts in June 1997. Sales tax costs are no longer paid on material used in the resurfacing contracts.

Recommendation No. 4: Improve controls over contracting by prohibiting the start of work prior to the issuance of a notice to proceed; removing unenforced contract provisions; and publicly advertising the availability of street lists so that all potential bidders have equal access to information.

Page 2 of 2 **Audit Report Tracking System** Audit Title: Street Resurfacing Program Report Date: 25-Aug-97 10. Recommendations Included in this Report (continued) Status: Partially implemented 5/97. Contract processing procedures will be revised next year in order to issue the notice to proceed prior to start of construction. Unenforced contract provisions have been removed from the contracts. A public advertisement was made for the availability of the resurfacing street list. Recommendation No. 5: Improve controls over contracting by ensuring that the asphalt plant scales are certified before work begins and that the certification is documented in the contract files. Status: Implemented 6/97. A form and procedure has been created to document certifications of all asphalt plant scales used in our resurfacing contracts. Recommendation No. 6: Improve the accuracy of bid specifications and evaluation. Bids should be evaluated on items that are likely to be used. Proposals may be requested for other items, but these should be separated from the items used to evaluate the bids. Status: Implement in 1998. The bid documents will be revised in our 1998 resurfacing contracts to separate the bid items and award the contracts based on the main items in the contracts. Recommendation No. 7: Improve contract monitoring by including estimated amounts of asphalt in daily reports, documenting reasons for construction delays, and documenting warranty inspections and the repairs of any deficiencies. Status: Implemented 5/97. The asphalt usage daily report form has been revised to show the estimated asphalt tonnage. We are documenting warranty inspections and the repairs of all deficiencies.

Audit Report	Tracking System	\$ 1900 A
1. Audit Title	2. This Report Date	RECEIVED
Street Resurfacing Program	4-Mar-98	MAR 4 1998
3. Department	4. Last Report Date	OFFICE
Public Works, Street & Traffic	25-Aug-97	
5. Department Head	6. Contact Person/Phon	e januaria
George E. Wolf, Jr.	Jere Meredith,	274-2481
7. Audit Release Date 10-Sept-97	8. ARTS Number 956-024-3	

9. Status of All Audit Recommendations

Status	Date	Status	Date
1. Implemented	3/1/98		
2. Implemented	4/7/98	•	
3. Implemented	6/1/97		
4. Implemented	3/31/98		
5. Implemented	6/1/97		
6. Implemented	3/31/98		
7. Implemented	5/1/97		

10. Recommendations Included in this Report

Recommendation No. 1: Increase control over the use of force account by developing policies and procedures and conditions under which force account work is appropriate: inspecting, monitoring, and documenting work performed and payments.

Status: Implemented 3/1/98. Guide Lines for force account work have been implemented.

Recommendation No.2: Reduce the number of projects completed under force account by developing separate contracts for street repairs related to water main breaks and for planned activities such as paving city parking lots.

Status: Implemented 4/7/98. Bids for a separate contract to make street repairs due to water main breaks will be opened on 4/7/98.

Recommendation No.4: Improve controls over contracting by prohibiting the start of work prior to the issuance of a notice to proceed; removing unenforced contract provisions; and publicly advertising the availability of street lists so that all potential bidders have equal access to information.

Page 2 of Z

Audit Report Tracking System

Audit Title: Street Resurfacing Program

Report Date: 4-Mar-98

10. Recommendations included in this Report (continued)

Status: Implemented 3/31/98. Bids on the contracts will be taken early this year with the idea of getting council approval for the contracts in early May. This should allow the notice to proceed to be issued prior to start of construction.

Recommendation No.6: Improve the accuracy of bid specifications and evaluation. Bids should be evaluated on items that are likely to be used. Proposals may be requested for other items, but these should be separated from the items used to evaluate the bids.

Status: Implemented 3/31/98. The bid items in our 1998 Resurfacing Contracts have been separated and the contracts will be awarded based on the main items in the contracts.

Appendix C		
Director of Public Works' Response		



Interdepartmental Communication

050 0 0000

SEP - 8 2000

CITY AUDITOR'S OFFICE

DATE:

August 30, 2000

TO

Mark Funkhouser, City Auditor

FROM:

George E. Wolf, Jr., P.E., ACM/Director of Public Works

SUBJECT:

Follow-up Audit, Street Resurfacing Contract

Below are the Public Works Department's responses to the four recommendations in your follow-up audit of the street resurfacing program.

Recommendation 1

The Director of Public Works should make preliminary resurfacing street lists available to all potential bidders by publicly informing potential bidders of their availability.

Response: Agree

We will place an advertisement in the <u>Daily Record</u> indicating street resurfacing lists are available to all potential bidders.

Recommendation 2

The Director of Public Works should prohibit contractors from working before the city issues the "Notice to Proceed".

Response: Agree

We will delay the beginning of our resurfacing work until the "Notice to Proceed" is issued.

Recommendation 3

The Director of Public Works should document warranty inspections and repairs.

Response: Agree

We will document all warranty inspections and documents sent to the contractors.

Recommendation 4

The Director of Public Works should establish a separate contract or revise the resurfacing contracts to include street repairs made for Water Services.

Response: Agree in part

Based on past experience, a separate contact for street repairs due to water main breaks would increase the cost of these repairs by about 50 percent. We will increase the force account item in each resurfacing contract from \$50,000 to \$150,000. We will revise the force account section of the contracts to include language which will describe the possible type of work which will be included under force account.

GEW:JEM:lcw

cc: Street and Traffic